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District Court for the District of Columbia or to the United States district court for the judicial district in which the Bank in question is established pursuant to section 3 of the Bank Act (12 U.S.C. 1423) for the enforcement of such order, as allowed under §1375 of the Safety and Soundness Act (12 U.S.C. 4635). In addition, a Bank or any executive officer or director of a Bank can be subject to enforcement action, including the imposition of civil monetary penalties, under §1371, §1372 or §1376 of the Safety and Soundness Act (12 U.S.C. 4631, 4632, or 4636) for failure to comply with such an order.

(f) *Judicial review.* A Bank that is not classified as critically undercapitalized may obtain judicial review of any final capital classification decision or of any final decision to take supervisory action made by the Director under §1229.2, §1229.4, §1229.7 or §1229.9 in accordance with the requirements and procedures set forth in §1369D of the Safety and Soundness Act (12 U.S.C. 4623).

Subpart B—Enterprises

AUTHORITY: 12 U.S.C. 4513b, 4526, 4613, 4614, 4615, 4616, 4617.

SOURCE: 76 FR 35733, June 20, 2011, unless otherwise noted.

§ 1229.13 Definitions.

For purposes of this subpart:

Capital distribution means—

(1) Any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an Enterprise, except a dividend consisting only of shares of the Enterprise;

(2) Any payment made by an Enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit made to finance an acquisition by the Enterprise of such shares or other ownership interests, except to the extent the Enterprise makes a payment to repurchase its shares for the purpose of fulfilling an obligation of the Enterprise under an employee stock ownership plan that is qualified under the Internal Revenue Code of 1986 (26 U.S.C. 401 *et seq.*) or any substantially equivalent plan as deter-

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mined by the Director of FHFA in writing in advance; and

(3) Any payment of any claim, whether or not reduced to judgment, liquidated or unliquidated, fixed, contingent, matured or unmatured, disputed or undisputed, legal, equitable, secured or unsecured, arising from rescission of a purchase or sale of an equity security of an Enterprise or for damages arising from the purchase, sale, or retention of such a security.

PART 1231—GOLDEN PARACHUTE PAYMENTS

Sec.

1231.1 Purpose.

1231.2 Definitions.

1231.3–1231.4 [Reserved]

1231.5 Factors to be taken into account.

AUTHORITY: 12 U.S.C. 4518(e).

SOURCE: 73 FR 53357, Sept. 16, 2008, unless otherwise noted.

§ 1231.1 Purpose.

The purpose of this part is to implement section 1318(e) of the Act by setting forth the standards that the Director will take into consideration in determining whether to limit or prohibit golden parachute payments to entity-affiliated parties.

[73 FR 54673, Sept. 23, 2008]

§ 1231.2 Definitions.

The following definitions apply to the terms used in this part:

(a) *Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), as amended by the Federal Housing Finance Regulatory Reform Act of 2008, enacted under Division A of the HERA.

(b) *Director* means the Director of FHFA or his or her designee.

(c) *Enterprise* means the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, Enterprises) and, except as provided by the Director, any affiliate thereof.

(d) *Entity-affiliated party* means—

(1) Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

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(2) Any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Bank shall not be deemed to have participated in the affairs of that Bank solely by virtue of being a shareholder of, and obtaining advances from, that Bank;

(3) Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if—

(i) The independent contractor knowingly or recklessly participates in—

(A) Any violation of any law or regulation;

(B) Any breach of fiduciary duty; or

(C) Any unsafe or unsound practice; and

(ii) Such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity;

(4) Any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and

(5) The Office of Finance.

(e) *Federal Home Loan Bank* means a bank established under the Federal Home Loan Act; the term “Federal Home Loan Banks” means, collectively, all the Federal Home Loan Banks.

(f)(1) *Golden parachute payment* means any payment (or any agreement to make any payment) in the nature of compensation by any regulated entity for the benefit of any current entity-affiliated party pursuant to an obligation of such regulated entity that—

(i) Is contingent on, or by its terms is payable on or after, the termination of such party’s primary employment or affiliation with the regulated entity; and

(ii) Is received on or after the date on which—

(A) The regulated entity became insolvent;

(B) Any conservator or receiver is appointed for such regulated entity; or

(C) The Director determines that the regulated entity is in a troubled condition.

(2) The term “golden parachute payment” shall not include:

(i) Any payment made pursuant to a pension or retirement plan which is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401) or pursuant to a pension or other retirement plan which is governed by the laws of any foreign country;

(ii) Any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Director determines, by regulation or order, to be permissible; or

(iii) Any payment made by reason of death or by reason of termination caused by the disability of an entity-affiliated party.

(3) Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in paragraph (f)(1)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described that paragraph.

(g) *FHFA* means the Federal Housing Finance Agency.

(h) *HERA* means the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (July 30, 2008).

(i) *Office of Finance* means the Office of Finance of the Federal Home Loan Bank System (or any successor thereto).

(j) *Regulated entity* means the Federal National Mortgage Association and any affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; or any Federal Home Loan Bank; the term “regulated entities” means, collectively, the Federal National Mortgage Association and any affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; and any Federal Home Loan Bank.

(k) *Troubled condition* means a regulated entity that—

(1) Is subject to a cease-and-desist order or written agreement issued by the FHFA that requires action to improve the financial condition of the regulated entity or is subject to a proceeding initiated by the Director,

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which contemplates the issuance of an order that requires action to improve the financial condition of the regulated entity, unless otherwise informed in writing by the FHFA; or

(2) Is informed in writing by the Director that it is in a troubled condition for purposes of the requirements of this part on the basis of the regulated entity's most recent report of examination or other information available to the FHFA.

(1)-(n) [Reserved]

§§ 1231.3—1231.4 [Reserved]

§ 1231.5 Factors to be taken into account.

In determining whether to prohibit or limit any golden parachute payment, the Director shall consider the following factors—

(a) Whether there is a reasonable basis to believe that the entity-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the regulated entity that has had a material effect on the financial condition of the regulated entity;

(b) Whether there is a reasonable basis to believe that the entity-affiliated party is substantially responsible for the insolvency of the regulated entity, the appointment of a conservator or receiver for the regulated entity, or the troubled condition of the regulated entity (as defined in regulations prescribed by the Director);

(c) Whether there is a reasonable basis to believe that the entity-affiliated party has materially violated any applicable provision of Federal or State law or regulation that has had a material effect on the financial condition of the regulated entity;

(d) Whether the entity-affiliated party was in a position of managerial or fiduciary responsibility;

(e) The length of time that the party was affiliated with the regulated entity, and the degree to which the payment reasonably reflects compensation earned over the period of employment and the compensation involved represents a reasonable payment for services rendered; and

(f) Any other factor the Director determines relevant to the facts and cir-

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cumstances surrounding the golden parachute payment, including any fraudulent act or omission, breach of fiduciary duty, violation of law, rule, regulation, order, or written agreement, and the level of willful misconduct, breach of fiduciary duty, and malfeasance on the part of an entity-affiliated party.

[73 FR 53357, Sept. 16, 2008, as amended at 73 FR 54673, Sept. 23, 2008; 74 FR 5102, Jan. 29, 2009]

PART 1233—REPORTING OF FRAUDULENT FINANCIAL INSTRUMENTS

Sec.

1233.1 Purpose.

1233.2 Definitions.

1233.3 Reporting.

1233.4 Internal controls, policies, procedures, and training.

1233.5 Protection from liability for reports.

1233.6 Supervisory action.

AUTHORITY: 12 U.S.C. 4511, 4513, 4514, 4526, 4642.

SOURCE: 75 FR 4258, Jan. 27, 2010, unless otherwise noted.

§ 1233.1 Purpose.

The purpose of this part is to implement the Safety and Soundness Act by requiring each regulated entity to report to FHFA upon discovery that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. In addition, each regulated entity must establish and maintain internal controls, policies, procedures, and operational training to discover such transactions.

§ 1233.2 Definitions.

The following definitions apply to the terms used in this part:

Bank or *Federal Home Loan Bank* means a Bank established under the Federal Home Loan Bank Act; the term “Federal Home Loan Banks” means, collectively, all the Federal Home Loan Banks.

Director means the Director of FHFA or his or her designee.

Enterprise means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation